**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.4340 OF 2004**

Shri.Gangaram Narayan Dongarkar .. Petitioner
V/s
Shri.Sunil Madhavrao Hasabnis & Ors. .. Respondents

Mr.A.A.Garge for the Petitioner.
Mr.A.M.Kulkarni for Respondent No.2.

**CORAM : B.H.MARLAPALLE & NARESH H.PATIL,JJ.**
**DATE : 25th September, 2006.**

**P.C.:**

1. Heard Mr.Garge, the lerned Counsel for the petitioner who was impleaded as Respondent No.2-B in the Consumer Complaint No.367 of 2001 before the Consumer Disputes Redressal Forum, Kolhapur. By the judgment and order dated 21.1.2002 the complaint was allowed and the Respondents were directed to take due steps to sign the conveyance i.e.the sale deed and get it registered. This order was sought to be challenged in an Appeal No.1450 of 2003 and the same was dismissed exparte by the Consumer Disputes Redressal Commission, Maharashtra State on 9.2.2004. The petitioner therefore filed Misc.Application No.343 of 2004 and prayed for restoration of Appeal No.1450 of 2003 decided exparte. After hearing the petitioner's counsel, the said commission was pleased to reject the said application vide its order dated 4.3.2004. Hence this petition.

2. Mr.Garge, the learned Counsel for the petitioner submitted that the appeal was decided exparte on the very first returnable date and without giving any

opportunity to the petitioner to contest the appeal on merits by adjourning the same. The State Commission considered all the pleas of the petitioner in Misc.Application No.343 of 2004 and by relying upon the judgment of the Supreme Court in the case of **Dr.J.J.Merchant & Others V/s.Shrinath Chaturvedi - 2002 CTJ 757 SC,** rejected the application for restoration.

3. Without going into the merits of the challenge to the order passed by the State Commission dismissing the appeal exparte, we have noted that the Consumer Disputes Redressal Forum, Kolhapur had merely directed the Respondents to take due steps to sign and register the sale deed. Admittedly, the original Respondent No.1 was the builder and the building construction was put up on the plot owned by the petitioner's late father Shri. Narayan Dongarkar. The land owners had executed the power of attorney in favour of the builder and thus builder acted as an agent of the plot owner. There is no dispute that the constructed flats were put in possession of the respective flat buyers on 20.3.1995, but for more than five years the builder did not take any steps to execute the sale deed in favour of the flat owners, and inspite of their reminders. The petitioner's father died on 1.4.1999 and during his life time also, the builder did not respond to the demand made by the flat owners. As a last resort they approached the Consumer Disputes Redressal Forum at Kolhapur.

4. The petitioner being one of the successor of the original land owner who had executed the power of attorney in favour of the builder, was a necessary party in the complaint and the directions have been given by the District Forum against all the Respondents i.e.the builder and the Legal Heirs & Representatives of the plot owner. The order of the District Forum is only the direction to comply with the legal obligations of the builder as well as the land owner who had in fact executed the power of attorney in favour of the builder. When the agent failed it was necessary for the principal to ensure that the statutory liability was duly discharged, and therefore, the petitioner cannot be allowed to take a position that he was not responsible in any event and he was unnecessarily dragged in the complaint.

5. In the peculiar facts of this case, we therefore do not find any reason to restore the appeal and direct the same to be heard on merits by the State Forum, more so because the order of the District Forum is only a direction to discharge the legal liability which cannot be disputed. Hence the petition is rejected summarily.

(NARESH H.PATIL,J.) ( B.H.MARLAPALLE, J.)